

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Kathleen R. Faber and Lexis Mays, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

McDonald's U.S.A., L.L.C., MBM
Management, Incorporated, Mac-Clark
Restaurants, Inc. and ABC Corporations 1-
100 d/b/a McDonald's,

Defendants.

Case No. 1:24-cv-1246

Honorable LaShonda J. Hunt

**DEFENDANT MAC-CLARK RESTAURANT, INC.'S
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1), (2), (3), (5), (6), AND 12(f)**

Defendant, Mac-Clark Restaurants, Inc. ("Mac-Clark" or "Defendant")¹, through its attorneys, JAMIE FILIPOVIC and STACEY VUCKO of O'HAGAN MEYER LLC, moves pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(5), and 12(b)(6) to dismiss Plaintiffs' First Amended Complaint for lack of standing, lack of personal jurisdiction, improper venue, and because Plaintiffs fail to state a claim upon which relief can be granted. In the alternative to its 12(b)(6) motion, Defendant moves to strike the collective action allegations and Plaintiff's prayer for relief pursuant to Rule 12(f). In support of its motion, Mac-Clark has

¹ Plaintiffs initially named Harold T. Clark III, LLC ("Clark") as a defendant. Doc. 1. The First Amended Complaint does not name Clark and Docket Entry 68 reflects that Clark was terminated in the case. To the extent a response is required on its behalf, Clark incorporates the arguments raised in its Motion to Dismiss the Complaint, Docs. 39-40, by reference and moves to dismiss for the same reasons set forth in Mac-Clark's motion to dismiss and because Clark did not employ any plaintiff.

contemporaneously filed its Memorandum of Law in Support of its Motion to Dismiss setting forth the reasons why Plaintiffs' First Amended Complaint must be dismissed, which are as follows:

1. Plaintiffs' claims must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because Plaintiffs lack Article III standing to prosecute their claims against Defendant. Plaintiffs Faber and the putative collective members never worked for Defendant, and Plaintiffs do not have standing to pursue their PUMP Act claims since they do not allege that they suffered an injury traceable to Defendant that is likely to be redressed by a favorable judicial ruling.

2. The Court does not have personal jurisdiction over Mac-Clark, a New York corporation with its principal place of business in New York, and therefore Defendant must be dismissed from this case with prejudice.

3. Plaintiffs filed this case in an improper venue and it must be dismissed pursuant to Fed. R. Civ. P. 12(b)(3).

4. Plaintiffs' collective action allegations must be stricken under Rule 12(b)(6) or 12(f) because they are facially and inherently deficient. Plaintiffs do not allege that there are similarly situated individuals to the named Plaintiffs in the proposed collective, the named Plaintiffs lack standing to pursue their PUMP Act claims against Mac-Clark, and the collective is not ascertainable.

5. Plaintiffs' prayer for punitive and compensatory damages and injunctive relief must be stricken under Rule 12(f) because punitive and compensatory damages are not available in the Seventh Circuit for a non-retaliation claim under the FLSA, and the named Plaintiffs do not have standing to seek injunctive or declaratory relief.

WHEREFORE, for all the reasons set forth above and in Defendant's contemporaneously filed Memorandum in Support of its Motion to Dismiss the First Amended Complaint, Defendant

Mac-Clark Restaurants, Inc. respectfully requests that the Court grant its motion and enter an Order dismissing Defendant Mac-Clark Restaurants, Inc. from this lawsuit with prejudice, or alternatively striking the collective allegations, and for such other relief as the Court deems just.

Date: August 15, 2024

Respectfully submitted:

Defendant Mac-Clark Restaurants, Inc.

By: /s/ Stacey Vucko
One of the Attorneys for Defendant

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